

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GULF MARINE FABRICATORS, LP

VERSUS

THE ATP INNOVATOR, bearing IMO
No. 742, her tackle, furniture, apparel,
appurtenances, etc., *in rem*,
AMERINDO SERVICES LTD, *in personam*
BLUE SKY LANGSA LTD, *in personam*

CIVIL ACTION NO. 2:16-cv-00430

IN ADMIRALTY,
F.R.C.P. 9(h) and Rule C

BRIEF SUPPLEMENT ON PREJUDGMENT INTEREST

NOW INTO COURT, through undersigned counsel, comes plaintiff, Gulf Marine Fabricators, LP (“Gulf Marine”), which, pursuant to this Court’s Order dated March 6, 2018 [Rec. Doc. 94], submits this Brief Supplement on its Motion for Entry of Rule 54(b) Judgment [R. Doc. 93], with respect to the amount of prejudgment interest that Gulf Marine requests to be awarded to it in a Rule 54(b) Judgment on its breach of contract claims against Amerindo Services Ltd (“Amerindo”) and Blue Sky Langsa Ltd (“Blue Sky”):

1. The Layberth Agreement between Gulf Marine, Amerindo and Blue Sky provides that all amounts payable under the Layberth Agreement “that are not paid when due shall bear interest at the rate of 10% per annum” [R. Doc. 54-3, p. 10, Sect. 8.5].

2. The attached Declaration of Todd Ladd and accompanying spreadsheet sets forth the manner by which Gulf Marine calculated the amount of prejudgment interest due to Gulf

Marine by Amerindo and Blue Sky at the rate of 10% per annum. [See Declaration of Todd Ladd, attached hereto as Exhibit A].

3. More specifically, through February 28, 2018, Gulf Marine has invoiced Amerindo and Blue Sky a total amount of \$2,035,579.04 for layberth fees, services and equipment provided to or for the ATP INNOVATOR. [Id.]. When the initial security deposit of \$165,000 from Amerindo and Blue Sky is deducted, Gulf Marine is owed \$1,870,589.04 through February 28, 2018, which figure continues to accrue daily. [Id.].

4. The spreadsheet attached to the Declaration of Todd Ladd (the “Spreadsheet”) lists the charges invoiced to Amerindo and Blue Sky by invoice date with a column for invoice amount, as well as the number of days each invoice was outstanding through March 12, 2018 using a net 30 or payment due in 30 days basis. [Id.]. In other words, the number indicated on the “Days Outstanding as of 3/12/2018” column in the Spreadsheet is the number of days since payment became due on each invoice. [Id.].

5. As shown in the Spreadsheet, Gulf Marine calculated interest at the contractual rate of ten percent (10%) pursuant to Section 8.5 of the parties’ Layberth Agreement. [Id.]. The interest calculation on the Spreadsheet was done on a net 30 day basis using a simple interest calculation (as opposed to compound interest calculation) from the date of each invoice through March 12, 2018. [Id.].

6. In accordance with Section 8.2 of the Layberth Agreement, some of Gulf Marine’s invoices were issued to Amerindo and Blue Sky on payment terms of “net 15” and other invoices were issued on payment terms of “net 30.” [Id.]. For purposes of calculating interest on the invoices, though, Gulf Marine treated each invoice as though it was issued on a

“net 30” day payment basis. [*Id.*]. Thus, interest is calculated as beginning to run on the day that is 30 days after the date of each invoice. [*Id.*].

7. For example, on January 29, 2016, Gulf Marine invoiced Amerindo and Blue Sky \$55,000. [*Id.*]. Using payment terms of net 30, the invoice was due on February 28, 2016. [*Id.*]. As of March 12, 2018, this invoice was 743 days outstanding. [*Id.*]. To calculate interest on this invoice, Gulf Marine multiplied the invoice amount by the interest rate and then multiplied that figure by the number of days outstanding divided by the number of days in a year. [*Id.*]. This is shown as following for the January 29, 2016 invoice:

$$\$55,000 * .10 * (743/365) = \$11,195.89$$

[*Id.*].

8. As shown in the Spreadsheet, the total interest owed on the amounts due to Gulf Marine equates to \$195,896.63 through March 12, 2018. [*Id.*]. Accordingly, Gulf Marine seeks prejudgment interest in the amount of \$195,896.63.

9. In addition, as also set forth in the Declaration of Todd Ladd, in Gulf Marine’s Motion for Partial Summary Judgment [R. Doc. 54], Gulf Marine inadvertently omitted a single invoice of \$55,000 dated March 15, 2017. [*Id.*]. Since the March 15, 2017 invoice of \$55,000 was inadvertently omitted, this \$55,000 amount was not included in the total calculation of amounts owed in Gulf Marine’s Motion for Partial Summary Judgment. [*Id.*].

10. When the \$55,000 invoice of March 15, 2017 is included, Gulf Marine is owed \$1,870,589.04 through February 28, 2018, which figure continues to accrue daily. [*Id.*]. The figure of \$1,870,589.04 breaks down as follows:

- a. \$1,090,323.69 in layberth fees, services and equipment provided to or for the INNOVATOR from November 30, 2015 through March 30, 2017.¹
- b. \$780,265.35 in layberth fees, services and equipment provided to or for the INNOVATOR from March 31, 2017 through February 28, 2018.

CONCLUSION

For the foregoing reasons, Gulf Marine seeks an award of prejudgment interest in the amount of \$195,896.63 in its request for a Rule 54(b) Judgment in its favor on Gulf Marine's breach of contract claims against Amerindo and Blue Sky. Gulf Marine also requests a Rule 54(b) Judgment in its favor for damages for unpaid charges in the total amount of \$1,870,589.04 (\$1,090,323.69 in damages for unpaid charges through March 30, 2017 and \$780,265.35 in damages for unpaid charges from March 31, 2017 through February 28, 2018), liquidated damages of \$100,000, prejudgment interest of \$195,896.63, and attorney's fees to be awarded upon proper application following entry of Rule 54(b) Judgment.

¹ This figure of \$1,090,323.69 is \$55,000 higher than the figure of \$1,035,323.69 that was set forth in Gulf Marine's Motion for Partial Summary Judgment [R. Doc. 54] as the amount due and owing through March 30, 2017. In Gulf Marine's Motion for Entry of Rule 54(b) Judgment [R. Doc. 93], Gulf Marine submitted a proposed Rule 54(b) Judgment that provided for judgment in the amount of \$1,035,323.69 in damages for unpaid account charges as of March 30, 2017. [R. Doc. 93-2]. This figure in the Rule 54(b) Judgment should be revised and updated to reflect judgment in the amount of \$1,090,323.60 in damages for unpaid account charges as of March 30, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2018, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system. I also certify that I have mailed this filing by United States Postal Service to any non-CM/ECF participants.

/s/ William C. Baldwin
